BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In re Applications of	)	MM DOCKET NO. 93-54
GAF BROADCASTING COMPANY, INC.	)	File No. BRH-910201WL
For Renewal of License of Station WNCN(FM) New York, New York	)	
CLASS ENTERTAINMENT AND COMMUNICATIONS, L.P.	)	File No. BPH-910430ME
For Construction Permit for a New FM Station on 104.3 MHz at New York, New York	)	

To: The Commission

JOINT REPLY TO MASS MEDIA BUREAU'S CONSOLIDATED COMMENTS

GAF Broadcasting Company, Inc. (GAF) and Class Entertainment and Communications, L.P. (Class), by their respective counsel, hereby reply to the Mass Media Bureau's July 6, 1993 Consolidated Comments re three pending GAF/Class pleadings, as follows:

I. The Joint Request for Dismissal of Court Appeal

The Bureau agrees that the Joint Request For Approval of Agreement For Dismissal of Court Appeal is in accord with the Commission's Rules and interposes no objection to its grant. The moving parties respectfully request expeditious approval so that the court appeal can be resolved.

II. The Joint Motion For Dismissal of Application

The Bureau opposes the Joint Agreement which looks toward the dismissal of the Class application in return for partial reimbursement of Class' application expenses. The Bureau

pleading misconstrues both the Commission Rule and underlying policy and the reasons advanced for approval of the subject agreement.

First, the Bureau contends that the settlement is "self-serving" and does not advance the public interest and contravenes "the Commission's policy proscribing the reimbursement of expenses in comparative renewal proceedings". The Bureau misstates the Commission's policy since Rule 73.3523 continues the long-standing policy of allowing settlements. The Revised Rule does restrict settlements to expenses after Initial Decision, but the Bureau reference to a broad proscription of settlements is simply not accurate. The Bureau statement, and indeed its pleading on the application settlement, reflects an antipathy to such settlements rather than a reasoned analysis of the facts of this case. As for the settlement being self-serving, all settlements in any case would fit that description. As for the public interest, it clearly would be served by approval of the settlement since it would conserve the time and resources of the licensee GAF, Class, and the Commission. Nowhere does the Bureau even attempt to explain, much less persuade, how requiring parties who wish to settle on a reasonable basis to continue instead to litigate serves the public interest.

The only legitimate question is how the Commission's requirement as to the timing of comparative renewal settlements is to be applied to the particular facts of this case. The Bureau does not dispute that there has occurred a substantial change in material fact outside the control of the

dismissing applicant. Instead, the Bureau suggests that Class should have recognized the impact of the change and sought to dismiss at an earlier time and is somehow at fault for prosecuting its application to date. This contention overlooks relevant facts and is directly contrary to the rationale of the revised rule that continued prosecution of a competing application dispels the notion of an abusive applicant. Here, Class' actions have amply demonstrated that it is a bona fide fully-qualified applicant, and Class has prosecuted its application vigorously.

Moreover, the Bureau's argument as to the timing of Class' decision to enter into a settlement overlooks pertinent facts. Thus, at the time the Class application was filed, the court reversal had just occurred, and the Department of Justice was seeking rehearing. In addition, after the rehearing was denied, there was still the possibility of a new trial on the charges. The possibility was not extinguished until August 9, 1991, over four months after the Class application was filed. Further, Class continued to contend that notwithstanding the dismissal of the criminal charges, the underlying conduct should be the subject of inquiry at the hearing. Moreover, there were still pending several allegations made by the Listener's Guild which if designated would materially impact the comparative proceeding. It was not until the order of May 28, 1992, that all these contentions were rejected by the Commission. Even then there still remained open various other allegations against GAF, which were not denied until rejected in the subject

Designation Order released March 15, 1993. Class did of

III. The Stay Motion

The Bureau opposes the parties' request for a brief stay

CERTIFICATE OF SERVICE

I, Linda Gibson, do hereby certify that on the 15th day of July 1993, a copy of the foregoing "Joint Reply To Mass Media Bureau's Consolidated Comments" was sent first-class mail, postage prepaid to the following:

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